



**KINGDOM OF CAMBODIA**  
**NATION RELIGION KING**

**ក្រុមប្រឹក្សាអង្គការជំនុំជម្រះ**

**THE ARBITRATION COUNCIL**

**Case number and name: 61/07- M & V (3)**

**Date of Award: 2 August 2007**

### **ARBITRAL AWARD**

(Issued under Article 313 of the Labour Law)

#### **ARBITRATION PANEL**

Arbitrator chosen by the employer party: **Ly Tayseng**

Arbitrator chosen by the worker party: **Tuon Siphann**

Chair Arbitrator (chosen by the two Arbitrators): **Pen Bunchhea**

#### **DISPUTING PARTIES**

##### **Employer party:**

Name: **M & V (3) Company**

Address: Building 1623, Sangkat Chak Angre Krom, Khan Mean Chey, Phnom Penh, Cambodia.

Telephone: 016 707 046

Fax: N/A

Representative:

- |                       |  |
|-----------------------|--|
| 1. Mr. Yin Nak        | Chief of Administration Office   |
| 2. Mrs. Van Porphin   | Assistant to the company Director  |
| 3. Mr. Morn Munivioth | Assistant to Mrs. Van Porphin  |
| 4. Mr. Long Heang     | Dispute Resolution Officer of Garment Manufacturers' Association in Cambodia |

##### **Worker party:**

Name: **[Coalition of Cambodian Apparel Workers Democratic Union (C.CAWDU)]**

Address: N/A

Telephone: 012 998 906 or 092 909 407 Fax: N/A

Representative:

- |                     |  |
|---------------------|--|
| 1. Mr. Ek Pheakdey  | General Secretary of Coalition of Cambodian Apparel Workers Democratic Union (C.CAWDU) |
| 2. Mr. Van Phea     | President of local C.CAWDU at the factory  |
| 3. Mrs. Roth Sothy  | Vice-President of local C.CAWDU at the factory   |
| 4. Mr. Tom Sotym    | Secretary of local C.CAWDU at the factory  |
| 5. Mr. Khun Sothy   | Activist of local C.CAWDU  |
| 6. Mr. Mi Saveun    | Activist of local C.CAWDU  |
| 7. Mr. Vith Nhao    | Activist of local C.CAWDU  |
| 8. Mr. Pouch Chanta | Activist of local C.CAWDU  |
| 9. Mr. Men Vy       | Assistant to Dispute Resolution of C.CAWDU   |

### **ISSUES IN DISPUTE**

(In the Non-Conciliation Report)

1. The workers of local C.CAWDU at M & V (3) demand the company to reimburse the 10,100 riels medical check fees as provided in Article 247 of the Labour Law. For those who have not undertaken the medical check, the company should allow them to have the medical check and all the expenses should be covered by the company. For the daily wage and attendance bonus, the company must maintain them for workers who have gone to have their medical checks. The employer confirms that he cannot reimburse the 10.100 riels medical check fees to workers because, upon the starting work, the workers have to prove they are healthy to the company. In case the workers already were working for the company and were required to have their medical checks, such expenses will be covered by the company.
2. The workers demand the company should renew all fixed duration contracts for the same duration as the first time contract. The company confirmed that it cannot comply with the demand because the length of the contract renewal depends on the actual situation of the company production (e.g., buyers).
3. The workers demand the company to reinstate Mr. Khun Sothy, Pouch Chantha and Vith Nhav by maintaining wages and other bonuses from the date that the company suspends work until work is returned because they are all activists of C.CAWDU at the M & V (3) Company. The company cannot accept this offer because this is an individual dispute and should go to the court for resolution.
4. The workers demand the company to pay full wages for members of C.CAWDU when the company did not have work from February to April, 2007 because this was provided in the Agreement clause 1 of the Arbitration Council on November 3, 2006. The company does not agree to the demand because the company follows Article 72 of Labour Law.

5. The workers demand that, regarding new workers who have signed fixed duration contracts for the first time, the company should sign all fixed duration contracts as six-month contracts. The company cannot comply with the demand and [respond as in Issue 2].

#### **JURISDICTION OF THE ARBITRATION COUNCIL**

*The Arbitration Council derives its power to make this Award from Chapter XII, Section 2B of the Labour Law (1997); the Prakas on the Arbitration Council No. 099 dated 21 April 2004; the Arbitration Council Procedural Rules which form an Annex to the same Prakas; and the Prakas on the Appointment of Arbitrators No. 099 dated 10 May 2007 (Fifth Term).*

*An attempt was made to conciliate the collective dispute that is the subject of this Award, as required by Chapter XII, Section 2A of the Labour Law. The conciliation hearing was unsuccessful, and the non-conciliation report No. 621/07 K.B/O.K/V.K, dated 03 July 2007 was submitted to the Secretariat of the Arbitration Council on 04 July 2007.*

#### **HEARING AND SUMMARY OF PROCEDURE**

**Place of hearing:** The Arbitration Council, Phnom Penh Center, Building A, Sothearos Blvd., Sangkat Tonle Basak, Khann Chamkarmorn, Phnom Penh.

**Date of hearing:** 20 July 2007 (From 8:00 a.m. to 12:00 p.m.)

**Procedural issues:**

On 11 May 2007 the Department of Labour Disputes received a complaint from workers demanding the company to improve working conditions at M & V (3) International Company. Then the Department of Labour Disputes assigned officers to settle the dispute over multiple sessions and the last conciliation was held on 13 June 2007 resulting in one of six issues being conciliated. The five non-conciliated issues were sent to the Arbitration Council on 04 July 2007 through the report of non-conciliated labour dispute No. 605 K.B/O.K/V.K, dated 03 July 2007.

Upon receipt of the case, all parties to the dispute were summoned by the Arbitration Council to a hearing on 20 July 2007 at 8:00 a.m.

Both parties attended the hearing as summoned by the Arbitration Council. The Arbitration Council sought other information relevant to this case and attempted to conciliate further the five non-conciliated issues, but the result was not successful. Thus, the Arbitration Council will consider and settle the remaining 12 non-conciliated issues based on the evidence and findings of fact as follows:

## EVIDENCE

**Witnesses and experts:** N/A

### **Documents, Exhibits and other evidence considered by the Arbitration Council**

#### Provided by the employer party:

1. Letter to authorize Mr. Yin Nak, Administrative Chief of the company, and Mr. Long Heang, Dispute Resolution Officer of [GMAC] to settle the collective labour dispute at the M & V Company in the case 61/07 of the Arbitration Council dated 19 July, 2007.
2. Statement of defense of Mr. Yin Nak, Administrative Chief, dated 16 July 2007.
3. Letter from the Ministry of Labour Disputes to Manager of M & V International Company (Third Branch) regarding suspension of workers' labour contracts.
4. Announcement on the recruitment of workers dated 30 April 2007.
5. Announcement on the recruitment of workers dated 17 October 2005.
6. Announcement on the recruitment of workers dated 17 October 2004.
7. Announcement on the recruitment of workers dated 27 March 2002.

#### Provided by the worker party:

1. Summary statement of Coalition of Cambodian Apparel Workers Democratic Union dated 18 July, 2007.
2. Agreement between employer and union, workers to settle collective dispute of M & V (3) in case 103/06 dated 03 November, 2006.

#### Provided by the Ministry of Labour and Vocational Training [MoLVT]:

1. Report of the collective labour dispute resolution at the M & V (3) Company, No. 621 K.B/O.K/V.K dated 03 July 2007.
2. Minutes of the collective labour dispute conciliation of the M & V (3) Company, dated 13 June 2007.
3. Order letter to nominate Mr. Som Tharen, officer of dispute resolution, conciliator collective dispute at the M & V (3) No. 083 K.B.V dated 13 June, 2007.

#### Provided by the Secretariat of the Arbitration Council:

1. Invitation letter No. 263 L.K.O dated 09 July 2007 to invite the worker party to attend the hearing.
2. Invitation letter No. 263 L.K.O dated 09 July 2007 to invite the employer party to attend the hearing.

## FACTS

- Having reviewed the report of the collective labour dispute conciliation

- Having listened to statements by representatives of the worker party and the employer party
- Having examined additional documents

**The Arbitration Council finds that:**

- M & V (3) Company started its operation in 1997. At the present time, it employs a total number of approximately 2,800 workers. C.CAWDU, workers' representative, confirmed that among the 2,800 workers, only 510 workers are members of C.CAWDU and claimants in this demand.

**Issue 1**

- The workers demanded the company reimburse medical check fees in the amount of 10,100 riels to workers who paid the medical check fee by themselves because legally the medical check fee is to be covered by the company.
- The company confirmed that when announcing its recruitment of workers, it required workers to attach in advance certain documents such as: CVs, 4x6 photos, ID cards, family cards, election cards, birth certificates, labour books, residency letters and medical check certificates. The company stated that workers must have the health check certificate before making their application to the company. As a result, the medical check fee is not covered by the company.
- The workers mentioned that the workers' medical check certificate [ ] has the company name on the certificate. Therefore, the medical check fee is to be covered by the company.
- The workers stated in the hearing that even though workers have an agreement with the employer in the minutes dated 26 December, 2006, clause 1 of which provides that "[Regarding] *demands for the medical check fee for workers whom the company recruited in the past, the workers party agreed not to make such demand, but if the company allows workers who are working to have medical checks, the company has to cover the medical check fee and maintain others benefits which worker have,*" workers still demand the company to reimburse the medical check fee of 10,100 riels because workers lost their rights and interests by the above agreement.
- The workers further mentioned that regarding those workers who are working at the company who have not yet undertaken the medical check, the company should allow those workers to have the medical check and the medical check fee is to be covered by the company, and wages and attendance bonus should be maintained for such workers undergoing the medical check.

- The company alleged in the hearing that among workers who are working at the company, there are no workers who have not yet undertaken the medical check; if there are any workers who have not yet undertaken the medical check, then a list [of such workers] should be sent to the company, and the company will allow those workers to undertake the medical check and will pay for the check fee and maintain other benefits which workers have.
- The workers sent name lists of 304 workers who requested the union to settle their labour dispute to the Arbitration Council, among which 12 workers were absent with permission and 16 workers had no thumbprints.
- The workers sent name lists of 400 workers who undertook the medical check between 1997 until 2007 to the Arbitration Council, among which for 10 persons the year they had their medical check was unclear and 16 persons have not yet undertaken their check.

## **Issue 2**

- The workers demanded the company to renew fixed duration contracts for the same duration as signed in the original contract: if the original was three months, the request is to renew for another three months; if six months, the request is another six months; if one year, the request is another one year.
- The workers mentioned in the hearing that if the company does not renew the fixed duration contracts of workers for the same period as the original contract, then workers will have bad feelings, and there may be a loss in quality and profits according to the production line and orders.
- The company argued that it properly complies with the Labour Law, but if the Labour Law requires the company to sign contracts according to workers' request, the company will do so.
- The workers has sent name lists and contracts of 10 workers to the Arbitration Council in which four labour contracts have fixed start and end dates and other six labour contracts have start dates but no end date.

## **Issue 3**

- The workers demanded the company to reinstate Khon Sothy, Pouch Chantha and Vit Nhav to their former position and maintain the same wage and other payments during the dates the company stopped their work until the reinstatement date.
- Mr. Khon Sothy, Mr. Pouch Chantha and Mr. Vit Nhav are group chiefs of the ironing section.

- The company terminated Mr. Khon Sothy, Mr. Pouch Chantha and Mr. Vit Nhav from work on 08 September, 2006.
- The company mentioned in the hearing that Mr. Khon Sothy, Pouch Chanta, Vit Nhav brought this issue to ask for help from other two federation unions, Cambodian Industry Union Federation and Cambodian Federation Independent Trade Union, before bringing this issue to Coalition of Cambodian Apparel Workers Democratic Union for assistance with settlement.
- The company further stated that on 03 October, 2006, workers withdrew their claims from the Department of Labour Disputes to which they had lodged their complaint in the morning and then withdrew it in the afternoon. Mr. Khon Sothy, Mr. Pouch Chanta and Mr. Vit Nhav did not reject what the company's alleged when the Arbitration Council sought confirmation in the hearing.
- In [Arbitral Award No.] 103/06[-M & V] dated 21 November, 2007, the Arbitration Council found that the dismissals of Mr. Khon Sothy, Mr. Pouch Chantha and Mr. Vit Nhav occurred prior the establishment of Coalition of Cambodian Apparel Workers Democratic Union and [the Arbitration Council] declined to consider the cases of Mr. Khon Sothy, Mr. Pouch Chantha and Vit Nhav once already in that Arbitral Award.

#### **Issue 4**

- The workers demand the company to reimburse full wages to workers when the company has no work from January until April 2007 because the agreement between workers and the company at the Arbitration Council dated 03 November 2006, at Point 1 states that *“When the company has no work for workers for a short period, the company will try to find any work which is proper, workers must follow the allotment of the company and the company will provide 100% wages. In case the company cannot find any work and workers want 100% full wages, workers must stay at the workplace and keep silence for the duration [of the day]. If the company cannot find any work and workers want to go home, the company will provide 50% wages.”*
- The company said in the hearing that the company cannot not comply with the agreement dated 03 November, 2006 when the company has no work for workers and received permission to suspend labour contracts from the Department of Labour Inspection. However, when the company has no work for workers during a short period of time such as a half day, one day or one week at the most, and the company has not [received permission to] suspend labour contracts from the Department of Labour Inspection, the company will comply with the agreement dated 03 November, 2006.

- The company received permission for the Department of Labour Inspection to suspend 3,600 general workers for two months by shifting the suspension between each building as follows:
  - Suspension of labour contracts of 1,900 workers from January 01, 2007 until February 28, 2007.
  - Suspension of labour contracts of 1,700 workers from March 01, 2007 until April 30, 2007.
- According to letter No. 953 K.K.B.V, 3,600 workers whose names are on the permission letter of the Laour Inspector are different from the numbers claimed by the employer in the hearing that there are only 2,800 workers at the company. However, it is noted that none of the parties objected to the figure of 3,600 workers regarding the work suspensions in January to April 2007.

### **Issue 5**

- The workers demand the company to sign fixed duration contracts with new workers starting with six months duration and up.
- The workers find that generally when signing six month fixed duration contracts, there is no serious impact on the company.
- The workers find that according to Labour Law there is no requirement for employer to sign six month fixed duration contracts. However, the Labour Law provides workers with more benefits. As a result, if the company signs six months fixed duration contracts, it provides workers with more seniority.
- The employer confirmed that, in general, the company signs fixed duration contracts from three months, six months and one year according the production when the company recruited new workers. Therefore, the company could not sign six month fixed duration contracts, when the company recruits new workers according to workers' request.

### **REASONS FOR DECISION**

#### **Issue 1: The workers demand the company to reimburse them 10,100 riels [each] for medical check fees.**

C.CAWDU raised in the hearing that the demand for reimbursement of 10,100 riels for medical check fees is for only 510 workers who are union members. The workers confirmed that even though workers agreed with the agreement with the employer in the minutes dated December 26, 2006 that “[Regarding] *demands for the medical check fees for*

*workers whom the company recruited in the past, worker party agrees not to make such demand, but if the company allows workers who are working to have medical checks, the company has to cover the medical check fee and maintain others benefits which worker have;*" this agreement was not enforceable because Article 247 of Labour Law requires the employer to pay the medical check fee for its workers.

Article 247 (a) and (c)(4) of the Labour Law states that *"The Ministry in charge of Labour shall issue a Prakas to determine: a) the conditions under which pre-employment periodical, and special physical exams are given...[and] c)(4) states that the conditions under which employers are required to establish and provide at their expense the medical check exams of workers as stipulated in point a) of this article."*

Regarding the medical check fee demand, in previous arbitral awards, the Arbitration Council noted that "Article 247(c) of Labour Law 1997 provides enough legal basis which requires employers to pay for medical check fee to workers prior recruiting them." (Please see Arbitral Awards 63/04-Shine Well, issue 1; 64/04-Mecury Garment, issue 1; 78/04-AIA, issue 1; 98/04-Great Union, issue 2; 106/04-Suit Way, issue 1, 107/04-Jacqsintex, issue 3; 05/05-G.H.G, issue 1 and 05/06-W&D, issue 1).

In previous cases, the Arbitration Council finds that *"Employer has to pay the expense and reimburse to workers."* (Please see Arbitral Awards 02/03-Chou Sing, issue 1; 21/03-Loyal Cambodiana , issue 7; 19/04-Kbal Koh II, issue 2, 53/04-Kong Hong, issue 3, 60/04-United Art, issue 2 and 05/06-W&D, issue 1).

In this case, employer confirmed in the hearing that workers agreed with employer in the minutes dated December 26, 2006 reads that *"[Regarding]demands for the medical check fee for workers whom the company recruited in the past, worker party agreed not to make such demand, but if the company allows workers who are working to have medical checks, the company has to cover the medical check fee and maintain others benefits which workers have."* However, workers confirmed that the above agreement made them lose legal rights and benefits as stated in Article 247 of the Labour Law.

The Arbitration Council finds that Article 247 of the Labour Law provides the legal basis for employers to pay for medical check fees. As a result, the Arbitration Council finds that the company can enforce the agreement and minutes dated December 26, 2006 as long as the company has enforced its obligations as stated in Article 247 of the Labour Law. In this case, the Arbitration Council finds that the company has not enforced its obligations as stated in Article 247 of the Labour Law. Therefore, there is not legally binding obligation to comply with the agreement and minutes dated December 26, 2006.

Article 13 paragraph 1 of the Labour Law states that *"The provisions of this law are of the nature of public order, excepting derogations expressly. Consequently, all rule resulted from a unilateral decision, a contract or a convention that do not comply with the provisions*

*of this law or any legal text for its enforcement, are null and void.*" The Arbitration Council finds that Article 13 of the Labour Law provides rights to disputing parties to refuse their own agreement when they find that the agreement provides less benefits than the rights provided to parties pursuant to the Labour Law.

In this case, the Arbitration Council finds that the agreement and minutes dated December 26, 2007 results in workers losing the benefits workers [are entitled to] receive according to the Labour Law: workers have the right to ask the employer to reimburse them for the medical check fees which workers paid by themselves. (Please see Arbitral Awards 19/04-Kbal Koh II, issue 2 and 53/04-Kuong Hong, issue 3).

That is why, in this case, the Arbitration Council agrees with the interpretation of previous Arbitral Awards. As a result, the Arbitration Council decides that employer must pay back 10, 100 riels for the medical check fees to workers.

Article 120 of the Labour Law provides that *"The statute of limitation for a lawsuit for the payment of wages is three years from the date the wage was due.*

*Claims subject to the statute of limitation of a lawsuit include the actual wage, perquisites and all other claims of the worker resulting from the labour contract, as well as the indemnity in the event of dismissal."*

According to the meaning of this Article, the statute of limitations on a claim resulting from labour contract is three years from the date which workers receive benefits, it might be the date workers sign the contract and start working or the date when worker are paid their wages. For this case, employer requires workers to provide the medical check certificate prior to their employment, meaning that workers have already paid for the medical check fee prior their employment.

In previous cases, the Arbitration Council determined that regarding workers who have paid their medical check fee prior to their employment, the claim for reimbursement of medical check fees is appropriate and the statute of limitations on workers' claim for the company to provide such reimbursement is three years within the date of signing the labour contract or date of [starting] work.

In this case, the Arbitration Councils agrees with the interpretation of past Arbitral Awards. The workers provided a name list of worker regarding the demand including the year when workers undertook the medical check. As a result, the Arbitration Council finds that only workers who have paid medical check fees by themselves, who signed the labour contract or paid for medical check fee from May 11, 2004 or after that, have the right to demand for medical check fees from the company. The workers who had paid medical check fee by themselves before signing contract on May 11, 2004, lost their rights to make a demand because statute of limitations [restricts those claims].

Therefore, the Arbitration Council decides that the employer must pay the 10,100 riels for medical check fee to workers who have paid the medical check fee by themselves and signed contract or started employment from May 11, 2004.

**Issue 2: The workers demand the company to renew employment contracts for the same duration as the original contracts.**

Article 65 of the Labour Law 1997 provides that “*A labour contract establishes working relations between the worker and the employer...*”

Article 67 (1) of the Labour Law 1997 provides that “*A labour contract signed with one’s consent for a specific duration must contain a precise finishing date.*”

Article 1 of Decree 38 on Contracts and Liabilities Outside the Contract reads that “*A contract is an agreement between two or more persons to create, change or terminate one or more obligations which bind them.*”

*In the above definition, a person may be a natural person or a legal entity. A legal entity can enter into a contract through his/her own representative.*”

Article 22 of Decree 38 provides that “*A contract is a legally binding agreement between the parties. Amendments to the contract can only be made with the consent of both contracting parties.*”

According to Article 65 of the Labour Law and Article 1, Article 22 of Decree 38 on Contracts and Liabilities Outside the Contract, the Arbitration Council finds that only contracting parties can amend, terminate, change or renew contracts. A third party cannot give orders or demand on behalf of contracting parties unless there is an agreement by the contracting parties. It means that the employer who is party to the contract has the right to hire, dismiss worker and renew contracts and the worker who is party to the contract also has the right to decide whether he/she agrees to renew the contract to work for employer, or not work for the employer and has the right to resign from work and seek a new job if the previous job is not satisfactory.

In previous cases, the Arbitration Council determined that the Arbitration Council cannot order the type of contract that an employer must enter into, whether a fixed or undetermined contract, because it is the parties’ right unless that contract is illegal. (Please see Arbitral Awards 53/05-Finegis, issue 1 and 56/06-Boric, issue 1).

In this case, workers, who are represented by C.CAWDU, demand the company to renew their fixed duration contract for the same duration as the original contract. The Arbitration Council determines that the employer, who is party to the contract, has the right to renew a labour contract for a fixed duration only if there is agreement with the worker who is party to the contract, and the worker who is a party to a contract has a right to decide

whether or not he/she agrees or not to renew contract for a fixed duration to work for the employer.

In the hearing, workers stated that this demand is made by 510 workers who are C.CAWDU members. However, workers sent to the Arbitration Council only 10 workers' contracts. According to this evidence, there were six [contracts] among those of the 10 workers, which had no expiration date. As a result, those workers are under undetermined duration contracts. The other four workers were hired to work under fixed duration contracts from 6 months to 10 months.

In this case, the Arbitration Council agrees with the interpretation of past Arbitral Awards. As a result, The Arbitration Council decides to reject the workers' demand for the company to renew workers fixed duration contracts for the same duration as the original contract.

**Issue 3: The workers demand the company to reinstate Mr. Khon Sothy, Pouch Chantha and Mr. Vit Nhav to their former positions**

In this Arbitral Award 61/07-M & V (3), the Arbitration Council, [having reviewed the principle of "res judicata" —the legal principle by which an authority, which has already, previously rendered a decision on the same issue brought by the same party, can decide not to render another decision]— finds that the principle of "res judicata" cannot apply in this case 61/07-M & V (3); this is because in case 103/06-M & V (3), which has the same party and the same issue, the Arbitration Council rendered its decision based on procedural grounds, not on the substantive issue.

In Arbitral Award 103/06-M & V (3), the Arbitration Council reasoned that this issue was not a collective dispute, it was an individual dispute, and decided that it "*Declines to consider the workers demand for the company to reinstate Mr. Khon Sothy, Mr. Pouch Chanta and Vit Nhav.*" In 61/07, the Arbitration Council has asked workers whether or not their demand again for the reinstatement of Mr. Khon Sothy, Mr. Vit Nhav raises any new facts or reasons related to such demand? Workers said there were no new facts or reasons.

In this case 61/07-M & V (3), the Arbitration Council makes the same determination as in 103/06-M & V (3) that the demand is an individual dispute.

Therefore, The Arbitration Council decides not to consider workers' demand for the company to reinstate Mr. Khon Sothy, Mr. Pouch Chanta, and Mr. Vit Nhav to their former positions.

**Issue 4: The Workers demand the company to pay full wage to workers which the company has no work between February to April 2007**

The Arbitration Council finds that suspension of labour contracts shall be made according to Labour Law procedures as stated in Article 71(11) pursuant to the following:

*“1- When the enterprise faces a serious economic or material difficulty or any particularly unusual difficulty, which leads to a suspension of the enterprise operation.*

*2- This suspension shall not exceed two months and be under the control of the Labour Inspector.”*

In general, suspension shall not exceed two months; and obtain notification and approval from the Labour Inspector. According to the meaning of this Article, the Labour Inspector is the person who determines whether or not to approve a company to suspend workers' employment when they go for inspections regarding suspensions as requested by the company. If the Labour Inspector issues an approval letter for the company conduct a suspension, then this means the suspension was made legally according to the Labour Law because the Labour Inspector is the one who examines the actual situation and reasonableness when he/she conducts the inspection at the company before allowing the company's suspension.

In this case, the Arbitration Council finds that the Labour Inspector issued a letter to permit M & V (3) company to suspend the workers' labour contracts; according to the Letter No. 953 K.K.B.V/OK/OTK dated December 26, 2006, there were 3,600 workers, and a two month period for such suspension shifting from building to another building as follows:

*“- Suspension labour contracts of 1900 workers from January 01, 2007 to February 28, 2007*

*-Suspension of labour contracts of 1700 workers from March 01, 2007 to April 30, 2007.”*

The Arbitration Council finds that there are two suspensions of labour contracts of M & V (3) Company, and each suspension lasted a two month periods and was under the control of the Labour Inspector.

Article 72 (1) of the Labour Law states that “The suspension of a labour contract affects only the main obligations of the contract, that are those under which the workers has to work for the employer, and the employer has to pay the worker, unless there are provisions to the contrary that require the employer to pay the worker.”

The meaning of the above Article is that the employer has no obligation to pay wages to its workers during a legal suspension, unless there is agreement or policy that requires the employer to pay wages.

The Arbitration Council finds that both parties have an agreement with each other regarding the suspension of labour contracts. The agreement between the employer and union workers was made to settle the collective dispute of M & V (3) company in [Arbitral Award] 103/06 dated November 03, 2006, and which states in point one as follows:

*“ -When the company has no work for workers for a short period, the company will try to find any work which is proper, workers must follow the allotment of the company and the company will provide 100% wages.*

*- In case the company cannot find any work and workers want 100% full wages, workers must stay at the workplace and keep silent for the duration [of the day].*

*- If the company cannot find any work and workers want to go home, the company will provide 50% wages.”*

In the hearing, workers thought that the short period can last from one month to two months. However, employer considered that the short period can be one time, one day or one week. The Arbitration Council finds that the agreement does not state the calculation of ‘short period’ and it is not stated in any specific law. However, the Arbitration Council finds that in the above Article 71, the suspension of labour contracts can last only two months. As a result, in the past the company used to provide full wages to workers when it did not have work for workers for one or two days according to agreement. The Arbitration Council finds that the enforcement and findings of the employer that a short period lasts one week is reasonable. It means that because this agreement was made only for short period suspensions, so this agreement cannot apply to a labour contract suspension which was approved by the Inspector for two month periods which is a long suspension of labour contract.

Therefore, The Arbitration Council decides to reject workers’ demand for the company to reimburse full wages to workers during the period when the company suspended labour contracts from February to April, 2007.

**Issue 5: The workers demand, when the company enters into fixed duration contracts with new workers for the first time, such contract duration be 6 months or longer**

In this issue 5, the Arbitration Council agrees with the [reasoning] of issue 2 above; that is, the Arbitration Council cannot make an order or demand on behalf of the contracting party with the company regarding signing contracts with new workers for a duration six months or longer. Therefore, the Arbitration Council decides to reject workers’ demand requiring the company to enter into contracts with new workers which have a duration of six months or longer. (See Arbitral Award 53/05-Finegis, issue 1)

Based on the above facts, legal principles, and evidence the Arbitration Council makes its decision as follows:

**DECISION**

**Issue 1:** Orders the employer to reimburse 10,100 riels to each worker who has paid the medical check fee by his/herself and entered into the labour contract or started working from May 11, 2004. Orders the employer to settle this payment for workers 15 days at most after this Award comes into force.

**Issue 2:** Reject workers' demand for the company to renew their labor contract for the same duration [as the original contract].

**Issue 3:** Declines to consider workers' demand for the company to reinstate Mr. Khon Sothy, Mr. Pouch Chantha and Mr. Vit Nhav to their former position.

**Issue 4:** Rejects workers' demand for the company to reimburse full wages during the period the company has no work for workers between February and April, 2007.

**Issue 5:** Rejects workers' demand for the company to enter into contracts with new workers which has more than 6 months duration.

**Type of Award: Non binding**

This Award will become binding after 8 days of the date of its notification unless one of the parties lodges a written opposition with the Secretariat of the Arbitration Council within this time period.

**SIGNATURES OF MEMBERS OF THE ARBITRATION PANEL:**

Arbitrator chosen by the employer party:

Name: **Ly Tayseng**

Signature: .....

Arbitrator chosen by the worker party:

Name: **Tuon Siphann**

Signature: .....

Chair Arbitrator (chosen by the two Arbitrators):

Name: **Pen Bunchhea**

Signature: .....